

## Statement of the Case.

tioning the total damage in the proportion that the number of his stock bears to the total number doing the damage.

But, as already stated, the court put the whole liability of the defendant upon the theory that he had enjoyed the exclusive use and occupation of plaintiff's lands, and had stocked them to their full capacity. If this be so, (and there was evidence to that effect,) then undoubtedly plaintiff would be entitled to recover the entire rental value of the lands for grazing purposes. If it were not so, then under the charge of the court the plaintiff could recover nothing, though defendant may have pastured thousands of his cattle upon these lands. Whether the court was correct in its view that, under the pleadings, plaintiff could not recover for a partial depasturage of his lands, is quite immaterial, since if the jury had found such partial depasturage it would have been their duty, notwithstanding, to have returned a verdict for the defendant. In the opinion of the court, the whole obligation of the defendant rested upon the fact that he had stocked the plaintiff's lands to their full capacity, and had thus enjoyed their exclusive use and occupation. The charge requested was, therefore, irrelevant.

There was no error in the action of the court, and its judgment is, therefore, *Affirmed.*

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*In re* STREEP, Petitioner.

ORIGINAL.

No number. Submitted January 21, 1895. — Decided January 23, 1895.

The judge in a Circuit Court having settled and signed a bill of exceptions, this court will not, on an application, supported by affidavits that the bill as settled and signed is incorrect, issue a writ of mandamus requiring him to resettle them.

THIS was an application by Louis F. Streep for leave to file a petition for a mandamus requiring the judge of the District Court of the United States for the Eastern District of New

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York, acting as judge of the Circuit Court of the United States for the Southern District of New York, to resettle the bill of exceptions in a certain cause lately pending in said Circuit Court, and tried before that judge, wherein the United States were plaintiffs and Louis F. Streep was defendant, as to a certain request to charge, "according to the truth as the same appears by the stenographer's minutes taken on the trial," in respect of which request to charge affidavits to the effect that the bill of exceptions as settled and signed by the judge was incorrect accompanied the application.

Applicant had previously moved in the Circuit Court for such resettlement of the bill of exceptions, and the motion had been denied.

*Mr. Frank Warner Angel* for the petitioner.

THE CHIEF JUSTICE, after making the above statement, said The application for leave to file a petition for mandamus is denied. *Ex parte Bradstreet*, 4 Pet. 102, *Chateaugay Iron Co., Petitioner*, 128 U. S. 544, 557.

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LINDSAY *v.* BURGESS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

No. 191. Submitted January 25, 1895. — Decided January 28, 1895.

The assignment in this court of errors to portions of the charge in an action below raises no question for the consideration of this court, unless exceptions were duly taken to them.

EJECTMENT. The court below in its charge to the jury said "This is an action of ejectment in which the plaintiff claims the legal title to and seeks to recover 5000 acres of land lying in Campbell County, Tennessee. She deraigned her title to the land as follows On the 2d of August, 1836, said tract of land was entered by Joshua English, Samuel Burgess, and Joseph Peterson by entry No. 843. Subsequent thereto, in